

SENATE FLOOR SUBSTITUTE FOR  
SENATE BILL 278

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

CREATING THE ELECTRONIC MEDICAL RECORDS ACT; ALLOWING THE  
CREATION, MAINTENANCE AND USE OF ELECTRONIC MEDICAL RECORDS;  
CLARIFYING INDIVIDUAL RIGHTS WITH RESPECT TO THE DISCLOSURE OF  
INFORMATION CONTAINED IN ELECTRONIC MEDICAL RECORDS; CLARIFYING  
THE PROTECTION OF PRIVACY OF ELECTRONIC MEDICAL RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Electronic Medical Records Act".

Section 2. PURPOSE.--The purpose of the Electronic  
Medical Records Act is to provide for the use, disclosure and  
protection of electronic medical records.

Section 3. DEFINITIONS.--As used in the Electronic  
Medical Records Act:

A. "demographic information" means information that

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1 identifies the individual who is the subject of the health care  
2 information, including the individual's name, date of birth and  
3 address and other information that identifies the individual,  
4 that may be used to identify the individual or that associates  
5 the individual with the individual's electronic medical record;

6 B. "disclose" means to release, transfer, provide,  
7 give access to or otherwise divulge in any other manner  
8 information outside the entity holding the information;

9 C. "electronic" means relating to technology having  
10 electrical, digital, magnetic, wireless, optical,  
11 electromagnetic or similar capabilities;

12 D. "electronic medical record" means an electronic  
13 record of an individual patient's health care information that  
14 may contain demographic information;

15 E. "electronic signature" means an electronic  
16 sound, symbol or process attached to or logically associated  
17 with a record and executed or adopted by an individual with the  
18 intent to sign the record;

19 F. "health care" means care, services or supplies  
20 related to the health of an individual and includes:

21 (1) preventive, diagnostic, therapeutic,  
22 rehabilitative, maintenance or palliative care and counseling;

23 (2) services, assessments or procedures that  
24 are concerned with the physical or mental condition or  
25 functional status of an individual or that affect the structure

1 or function of the body of an individual; and

2 (3) the sale or dispensing of a drug, a  
3 device, a piece of equipment or other item in accordance with a  
4 prescription;

5 G. "health care group purchaser" means a person who  
6 is licensed, certified or otherwise authorized or permitted by  
7 the New Mexico Insurance Code to pay for or purchase health  
8 care on behalf of an identified individual or group of  
9 individuals, regardless of whether the cost of coverage or  
10 services is paid for by the purchaser or the persons receiving  
11 coverage or services;

12 H. "health care information" means any information,  
13 whether oral or recorded in any form or medium, related to the  
14 past, present or future physical or mental health or condition  
15 of an individual; the provision of health care to an  
16 individual; or the past, present or future payment for the  
17 provision of health care to an individual;

18 I. "health care institution" means an institution,  
19 facility or agency licensed, certified or otherwise authorized  
20 or permitted by law to provide health care in the ordinary  
21 course of business;

22 J. "health information exchange" means an  
23 arrangement among persons participating in a defined secure  
24 electronic network service, such as a regional health  
25 information organization, that allows the sharing of health

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1 care information about individual patients among different  
2 health care institutions or unaffiliated providers. The use of  
3 an electronic medical record system by a health care provider,  
4 by or within a health care institution or by an organized  
5 health care arrangement as defined by the federal Health  
6 Insurance Portability and Accountability Act of 1996 does not  
7 constitute a health information exchange;

8 K. "information" means data, including text,  
9 images, sounds and codes and computer programs, software and  
10 databases;

11 L. "provider" means an individual who is licensed,  
12 certified or otherwise authorized or permitted by law to  
13 provide health care in the ordinary course of business or  
14 practice of a profession;

15 M. "record" means information that is inscribed on  
16 a tangible medium or that is stored in an electronic or other  
17 medium and is retrievable in perceivable form;

18 N. "record locator service" means an information  
19 service that contains demographic information and the location  
20 of health care information of a specified individual across  
21 different health care institutions or unaffiliated providers  
22 that participate in the service. The use of an electronic  
23 medical record system by a health care provider or by an  
24 organized health care arrangement as defined by the federal  
25 Health Insurance Portability and Accountability Act of 1996

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1 does not constitute a record locator service; and

2 O. "treatment" means the provision, coordination or  
3 management of health care and related services by one or more  
4 providers, including the coordination or management of health  
5 care by a provider with a third party; consultation between  
6 providers relating to an individual; or the referral of an  
7 individual for health care from one provider to another.

8 Section 4. ELECTRONIC MEDICAL RECORDS--ELECTRONIC  
9 SIGNATURES--LEGAL RECOGNITION.--If a law or rule requires a  
10 medical record to be in writing, or if a law or rule requires a  
11 signature pertaining to a medical record, an electronic medical  
12 record or an electronic signature satisfies that law or rule,  
13 except for a court rule.

14 Section 5. RETENTION OF ELECTRONIC MEDICAL RECORDS.--

15 A. If a law or rule requires that a medical record  
16 be retained, the requirement is satisfied by retaining an  
17 electronic record that:

18 (1) accurately reflects the medical record;

19 and

20 (2) remains accessible and is capable of being  
21 accurately reproduced for later reference.

22 B. If a law or rule requires a medical record to be  
23 presented or retained in its original form or provides  
24 consequences if the medical record is not presented or retained  
25 in its original form, that law or rule is satisfied by an

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1 electronic medical record retained in accordance with  
2 Subsection A of this section.

3 C. A medical record retained as an electronic  
4 medical record in accordance with Subsection A of this section  
5 satisfies a law or rule requiring a person to retain a medical  
6 record for evidentiary, audit or other purposes.

7 Section 6. USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE  
8 INFORMATION.--

9 A. A provider, health care institution, health  
10 information exchange or health care group purchaser shall not  
11 use or disclose health care information in an individual's  
12 electronic medical record to another person in violation of  
13 state or federal law and without the consent of the individual.

14 B. A provider, health care institution or health  
15 care group purchaser may disclose demographic information and  
16 information about the location of an individual's electronic  
17 medical records to a record locator service in accordance with  
18 state or federal law. A provider or health care institution  
19 participating in a health information exchange using a record  
20 locator service shall not have access to demographic  
21 information, information about the location of the individual's  
22 electronic medical records or information in an individual's  
23 electronic medical record except in connection with the  
24 treatment of the individual or as permitted by the consent of  
25 the individual or as otherwise permitted by state or federal

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1 law.

2 C. A record locator service shall maintain an audit  
3 log of persons obtaining access to information in the record  
4 locator service, which audit log shall contain, at a minimum,  
5 information on:

6 (1) the identity of the person obtaining  
7 access to the information;

8 (2) the identity of the individual whose  
9 information was obtained;

10 (3) the location from which the information  
11 was obtained;

12 (4) the specific information obtained; and

13 (5) the date that the information was  
14 obtained.

15 D. The audit log shall be made available by a  
16 health information exchange on the request of an individual  
17 whose health care information is the subject of the audit log;  
18 provided, however, that the audit log made available to the  
19 individual shall include only information related to that  
20 individual. The audit log shall be made available to the  
21 requesting individual annually for a fee not to exceed twenty-  
22 five cents (\$.25) per page as established by the department of  
23 health.

24 E. A record locator service shall provide a  
25 mechanism under which individuals may exclude their demographic

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1 information and information about the location of their  
2 electronic medical records from the record locator service. A  
3 person operating a record locator service or a health  
4 information exchange that receives an individual's request to  
5 exclude all of the individual's information from the record  
6 locator service is responsible for removing that information  
7 from the record locator service within thirty days. An  
8 individual's request for exclusion of information shall be in  
9 writing and shall include a waiver of liability for any harm  
10 caused by the exclusion of the individual's information.

11 F. When information in an individual's electronic  
12 medical record is requested using a record locator service or a  
13 health information exchange:

14 (1) the requesting provider or health care  
15 institution shall warrant that the request is for the treatment  
16 of the individual, is permitted by the individual's written  
17 authorization or is otherwise permitted by state or federal  
18 law; and

19 (2) the person disclosing the information may  
20 rely upon the warranty of the person making the request that  
21 the request is for the treatment of the individual, is  
22 permitted with the consent of the individual or is otherwise  
23 permitted by state or federal law.

24 G. Notwithstanding any other provision of law,  
25 information in an individual's electronic medical record may be

1 disclosed:

2 (1) to a provider that has a need for  
3 information about the individual to treat a condition that  
4 poses an immediate threat to the life of any individual and  
5 that requires immediate medical attention; and

6 (2) except as provided in the Electronic  
7 Medical Records Act, to a record locator service or a health  
8 information exchange for the development and operation of the  
9 record locator service and the health information exchange.

10 Section 7. LIABILITY.--If an individual requests to  
11 exclude all of the individual's information from the record  
12 locator service pursuant to Subsection E of Section 6 of the  
13 Electronic Medical Records Act, the record locator service,  
14 health information exchange, health care institution or  
15 provider shall not be liable for any harm to the individual  
16 caused by the exclusion of the individual's information.

17 Section 8. OUT-OF-STATE DISCLOSURES.--A disclosure  
18 otherwise permissible under the Electronic Medical Records Act  
19 may be made to providers, health care group purchasers, health  
20 care institutions, health information exchanges or record  
21 locator services located or operating outside of the state.

22 Section 9. EXCLUSION OF CERTAIN INSURERS.--Nothing in the  
23 Electronic Medical Records Act shall be construed to apply to a  
24 person operating as a property and casualty insurer, workers'  
25 compensation insurer, life insurer, long-term care insurer or

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1 disability income insurer.

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